

Amendment No. 1 to SB2412

Crowe
Signature of Sponsor

AMEND Senate Bill No. 2412

House Bill No. 2162*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 2, Part 1, is amended by adding the following as a new section:

(a) As used in this section, unless the context otherwise requires:

- (1) "Elderly person" means a person sixty (60) years of age or older;
- (2) "Executive director" means the executive director of the commission;
- (3) "State agency" means an agency of state government, including, but

not limited to:

- (A) The department of intellectual and developmental disabilities;
- (B) The department of mental health and substance abuse services;
- (C) The department of human services, including the division of adult protective services;
- (D) The department of children's services;
- (E) The department of commerce and insurance, including the state fire marshal's office;
- (F) The Tennessee bureau of investigation;
- (G) The bureau of TennCare; and
- (H) The department of health;

(4) "Unlicensed facility" means a facility that has been found to be in violation of § 68-11-213 or § 33-2-405 for failure to be licensed by a state agency; and

(5) "Vulnerable person" means a person eighteen (18) years of age or older who, by reason of advanced age or other physical or mental condition, is deemed by a state agency to be vulnerable.

(b) The executive director shall establish and maintain a registry containing the names and addresses of unlicensed facilities that have been determined by a state agency to be providing care to elderly or vulnerable persons without maintaining the appropriate licensure under titles 33 or 68. The executive director shall publish the registry on the commission's website.

(c) A state agency that finds that a person or facility is operating an unlicensed facility in violation of §§ 68-11-213 or 33-2-405 shall notify the executive director within five (5) business days of the finding. The state agency shall provide the executive director with the following:

(1) The name of the facility;

(2) The names of the facility's owners or operators;

(3) The physical location or mailing address of the facility;

(4) A citation to the statutory or regulatory authority used by the state agency in making the finding; and

(5) Other information that the state agency deems necessary to adequately identify the facility to the public.

(d) Within five (5) business days of receipt of notice under subsection (c), the executive director shall publish on the registry the documents and information provided by the state agency. The executive director shall notify the person or facility in writing, based on the mailing address provided by the state agency, within three (3) business days of publication on the registry.

(e) A person or facility published on the registry may appeal the publication to the executive director within thirty (30) days of notification under subsection (d). The executive director or the executive director's designee shall afford the person or facility a hearing in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. Following the contested case, if the executive director finds that the person or facility was appropriately placed on the registry and was in operation after receiving notice under subsection (d), then the executive director may seek injunctive relief in Davidson County chancery court.

(f) On or after July 1, 2022, it is unlawful for a person or facility to operate a facility after notification of publication on the registry. A violation of this subsection (f) is a Class D felony.

(g) A state agency that notified the executive director of a finding under subsection (c) may later recommend to the executive director the removal of a person or facility's information from the registry, if:

(1) The state agency finds that the original notice to the executive director was in error; or

(2) The facility has applied for and obtained the necessary licensure under title 33 or 68. The state agency shall provide the facility's license number and the date of licensure.

(h) The executive director may promulgate rules to implement this section. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 68-11-213(a), is amended by adding the following as a new subdivision:

() In addition to the relief provided in this subsection (a), the court in which the department brings such claim for relief may assess a civil penalty not to exceed five thousand dollars (\$5,000) against a person or entity operating an assisted living facility,

home for the aged, adult care home, or traumatic brain injury residential home without having the license required by this chapter, as well as costs and fees against a person or entity enjoined under this section. Each day of operation constitutes a separate violation.

SECTION 3. Tennessee Code Annotated, Section 68-11-213(b), is amended by deleting the subsection and substituting:

(b) Based upon a complaint that a home for the aged, assisted-care living facility, adult care home, or traumatic brain injury residential home, subject to licensure under this part may be operating without a license, the department may enter the facility in order to investigate or inspect the complaint for the necessity of or compliance with licensure under this part.

SECTION 4. Tennessee Code Annotated, Section 68-11-213(c), is amended by deleting the subsection and substituting:

(c) If an owner, operator, manager, or person who participates in the operation of the facility refuses to allow entrance into the facility, the department shall refer the matter to the local district attorney who shall seek a civil warrant authorizing such entry or inspection. Local law enforcement in the county where the facility is located shall assist in executing such warrant.

SECTION 5. Tennessee Code Annotated, Section 68-11-213(i), is amended by adding the following as a new subdivision:

() The utilization of a proceeding or imposition of penalties authorized by this subsection (i), or the initiation of an appeal from such proceeding or imposition, is not a prerequisite for the department to seek and obtain injunctive relief authorized by subsection (a).

SECTION 6. Tennessee Code Annotated, Section 71-6-104, is amended by deleting subsections (a) and (b) and substituting:

(a) Upon proper application by the department, a court with jurisdiction under this part may issue a temporary restraining order or other injunctive relief to prohibit a violation of this part, regardless of the existence of another remedy at law.

(b) The court may enjoin an individual, if the court finds the individual has engaged in the abuse, neglect, or exploitation of an adult, as defined in this part, from providing care or owning or operating a facility or residence where care is provided for any person, on a temporary or permanent basis, regardless of whether:

(1) Such actions occurred in an institutional setting, a residential setting, or in any type of adult day care, group home, or foster care arrangement serving adults; or

(2) Such person, facility, or arrangement serving adults is licensed to provide care for adults.

SECTION 7. This act takes effect upon becoming a law, the public welfare requiring it.